IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JASON J. SHAHAN, Appellant.	No. 33253-1-II UNPUBLISHED OPINION

Quinn-Brintnall, C.J. — Jason Shahan appeals his conviction of attempting to elude a pursuing police vehicle, claiming that the trial court improperly admitted into evidence his post-arrest statements to a Washington State Trooper and that the State failed to present sufficient evidence to prove he drove "in a manner indicating a wanton or willful disregard for the lives or property of others." Clerk's Papers (CP) at 32. Rejecting both contentions, we affirm.

Facts

On January 21, 2004, at 8:30 p.m., Washington State Trooper Steve Shiflett was on duty, in uniform, and driving a marked police vehicle equipped with flashing red and blue lights. It was dark, the roads were dry, and traffic was "light." Report of Proceedings (RP) (Feb. 1, 2005) at 10. While patrolling on Boone Street in South Aberdeen, he used his flashing lights to signal Shahan. Shahan was driving a 1976 International Scout. Shahan immediately accelerated,

reaching an estimated speed of 55 m.p.h., 25 m.p.h. higher than the speed limit. Trooper Shiflett turned on his siren, but Shahan still did not stop.

At the intersection of Boone Street and Scott Street, Shahan drove through a red light and across a lane of potential cross traffic. Businesses at that intersection included a gas station and a grocery store. As Shahan turned right onto King Street, his rear tires broke loose from the pavement, but the Scout did not swing or slide out. Shahan turned left onto Clark Street at the next intersection, a four-way stop. He was driving at a speed of approximately 30 m.p.h. and did not stop for the stop sign in this residential area.

Shahan now approached the intersection of Clark Street and Curtis Street. Because of the presence of bars, restaurants, and street parking, drivers turning right onto Curtis Street have poor visibility and difficulty seeing cars coming from the left. Nevertheless, Shahan did not stop at the stop sign, turning right onto Curtis Street at a speed of about 15 to 20 m.p.h. Shahan parked in a bar parking lot and got out of his car.

Trooper Shiflett arrested Shahan at gunpoint. After handcuffing him and placing him in the rear seat of the police car, Trooper Shiflett read Shahan his *Miranda*[1] rights from a standard card. Trooper Shiflett was standing next to the police car's open rear door. Although Shahan later reported that he had consumed a couple beers, he did not appear intoxicated and appeared to understand Trooper Shiflett; Shahan was "a little bit agitated," but not frightened. RP (Nov. 1, 2004) at 8. Trooper Shiflett was not trying to intimidate Shahan, and had calmed from the excitement of the pursuit. After Trooper Shiflett read the rights, Shahan indicated he understood them, either by nodding or saying so. Trooper Shiflett then asked why Shahan had not stopped

[1] *Miranda v. Arizona*, 384 U.S. 436, 444, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

his car; Shahan told him he had drunk a couple beers, had some outstanding warrants,[2] and did not want to go back to jail. When Trooper Shiflett later returned to the police car, Shahan said that he had not stopped because his accelerator was stuck. When Trooper Shiflett checked the accelerator, it did not appear to be stuck.

Trial Court Procedure

The State charged Shahan with one count of attempting to elude a pursuing police vehicle. After holding a CrR 3.5 hearing at which Trooper Shiflett was the only witness, the trial court ruled that Shahan's post-arrest statements could be admitted at trial. Relying on *State v. Terrovona*,[3] the trial court held that although Trooper Shiflett did not ask Shahan to expressly waive his *Miranda* rights, Shahan impliedly waived them by choosing, without coercion, to answer Trooper Shiflett's questions after hearing and understanding his rights.

After a trial at which Trooper Shiflett was the only witness, a jury found Shahan guilty of attempting to elude a pursuing police vehicle as charged. The trial court imposed a presumptive range sentence of 10 months in jail. Shahan appeals.

ANALYSIS

Implied Waiver

Although he assigns error to the trial court's CrR 3.5 hearing findings of fact, Shahan's brief does not argue that those findings are not supported by substantial evidence.[4] *See State v.*

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[2] Trooper Shiflett testified to the warrant portion of Shahan's explanation at the CrR 3.5 hearing, but not at the jury trial.

[3] 105 Wn.2d 632, 646-47, 716 P.2d 295 (1986).

[4] In any event, the trial court's findings track the testimony of Trooper Shiflett, the only witness; thus, they are supported by substantial evidence, that is, "a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding." *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Instead, Shahan argues that the trial court erred by holding that the facts supported a conclusion that he impliedly waived his *Miranda* rights. This is an issue of law we review de novo. *See State v. Johnson*, 94 Wn. App. 882, 897-98, 974 P.2d 855 (1999), *review denied*, 139 Wn.2d 1028 (2000).

In order to protect an arrestee's constitutional right against self-incrimination, before custodial questioning begins, a police officer must warn the arrestee that he or she has a right not to talk, that the government can use any statements he or she makes to prosecute him or her, that he or she has the right to have a lawyer with them during questioning, and that the government will appoint a lawyer if he or she can't afford one. *Miranda v. Arizona*, 384 U.S. 436, 444, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); *State v. Templeton*, 148 Wn.2d 193, 207-08, 59 P.3d 632 (2002). Once the officer has informed the arrestee of his or her rights, he or she may waive them, so long as that waiver is knowing, intelligent, and voluntary; the arrestee's subsequent statements are then admissible in evidence. *Miranda*, 384 U.S. at 444, 475-76, 479; *State v. Terrovona*, 105 Wn.2d 632, 646, 716 P.2d 295 (1986).

In interpreting the federal decisions, our State Supreme Court has held that a *Miranda* waiver may be "implied from the facts of a custodial interrogation." *Terrovona*, 105 Wn.2d at 646. The *Terrovona* court then summarized factors that would support a conclusion of implied waiver:

> Implied waiver has been found where the record reveals that a defendant understood his rights and volunteered information after reaching such understanding. Waiver has also been inferred where the record shows that a defendant's answers were freely and voluntarily made without duress, promise or threat and with a full understanding of his constitutional rights.

105 Wn.2d at 646-47 (citations omitted).

Here, the record and the trial court's findings show that Trooper Shiflett advised Shahan of his *Miranda* rights using a standard card and that Shahan understood these rights.[5] At this point, Shahan knew he was in police custody, as he was handcuffed in the back of a police car. Trooper Shiflett was calm and not attempting to intimidate Shahan, and the record contains no evidence that Trooper Shiflett used any threats, promises, or physical force to get Shahan to answer questions. Instead, immediately after indicating that he understood his right not to talk, Shahan chose to answer a question about why he had not stopped his car when signaled to do so. The trial court did not err when it concluded Shahan impliedly waived his rights. *See also Johnson*, 94 Wn. App. at 897-98 (finding implied waiver when the police arrested the suspect, read him his rights, the suspect said he understood them, and then immediately provided information).

Shahan essentially urges that the *Terrovona* standard insufficiently protects the federal *Miranda* right, but we are bound by our State Supreme Court's interpretations of federal precedent. *See State v. Hairston*, 133 Wn.2d 534, 539, 946 P.2d 397 (1997). Further, the *Miranda* Court's clear concern that arrestee statements made after lengthy interrogation or incarceration would not be the product of valid waivers is not implicated here. *See* 384 U.S. at 476. Shahan made his statement immediately after being advised of his rights. Indeed, evidence of a waiver is stronger and less ambiguous in Shahan's case than in *Terrovona*; Terrovona first provided some information but then invoked his rights.

[5] Shahan's statement that he had outstanding warrants also suggests a prior understanding of the criminal justice system and his rights.

Shahan also urges that we find within *Terrovona* a requirement that the arrestee know that he or she is being arrested for a new crime and the nature of that crime before finding an implied waiver from the arrestee's decision to answer questions after hearing and understanding his or her rights; he urges that the waiver cannot be knowing without such a showing. We find nothing in *Terrovona* compelling such a new requirement and decline to create one. Moreover, the knowledge required for a valid waiver is that the arrestee know and understand that he or she is in police custody, that he or she nevertheless continues to enjoy his or her constitutional rights, and that *anything* he or she says can be used against him or her; it is not that he or she be told precisely what charges the State might choose to pursue. Imposing such a requirement would, in effect, limit the prosecutor's charging decision to the arresting officer's announced initial probable cause determination.[6]

Sufficiency of the Evidence

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980). "[W]hen the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). In performing this review and drawing inferences, circumstantial evidence is as reliable as

[6] Shahan's appellate counsel suggests that Shahan might have believed that he was being arrested only for the outstanding warrants and failed to realize that he was waiving his right to remain silent about the crime of attempting to elude a pursuing police vehicle. As stated above, we decline to add his proposed requirement, but note that Shahan, after hearing and understanding his rights, chose to respond to a question about why he failed to stop his car, not to a question about his warrants.

direct evidence. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). And as an appellate court, we "must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence." *Thomas*, 150 Wn.2d at 874-75.

Trooper Shiflett did not testify to any particular cars or persons endangered by Shahan's driving[7] and testified that Shahan did not weave, drive on the shoulder, or swerve to avoid hitting cars or persons. Based on this testimony, Shahan argues that the evidence was therefore insufficient to prove he drove in a manner indicating a wanton or willful disregard for the lives or property of others. But

> [t]he State need not prove that anyone else was endangered by the defendant's conduct, or that a high probability of harm actually existed. Rather, the State need only show that the defendant engaged in certain conduct, from which a particular disposition or mental state—that of "wanton or wilful disregard for the lives or property of others"—may be inferred.

State v. Whitcomb, 51 Wn. App. 322, 327, 753 P.2d 565 (1988) (quoting former RCW 46.61.024 (1983));[8] *accord State v. Refuerzo*, 102 Wn. App. 341, 348-49, 7 P.3d 847 (2000); *State v. Treat*, 109 Wn. App. 419, 427, 35 P.3d 1192 (2001).

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[7] He testified only that traffic was "light." RP (Feb. 1, 2005), at 10.

[8] We note that the legislature amended former RCW 46.61.024, effective July 27, 2003, to substitute "in a reckless manner" for the above standard. Laws of 2003, ch. 101, § 1. Shahan's charged driving occurred on January 21, 2004, and the State charged him using the applicable "reckless manner" language. CP at 1. At trial, however, the defense proposed and the court gave an instruction defining the crime using the "wanton or willful" standard, as well as an instruction defining "wanton" and "willful." CP at 32. The defense proposed a "to convict" instruction incorporating the "wanton or willful" standard, but the court gave one incorporating the "reckless manner" standard, without defining that term. The parties appear to have assumed that "reckless manner" incorporated the older "wanton or willful" standard, but the record contains no explicit discussion of the statutory change or of why the court gave this combination of instructions. On appeal, neither party notes the statutory change or claims error from it. Instead, Shahan argues that the State failed to prove the "wanton or willful" standard and the State argues it did. Because error, if any, was invited, we do not here decide whether the statutory amendment changes the elements of this crime.

Here, Shahan drove his car up to 25 m.p.h. above the speed limit on a city street, drove through an intersection with another street without stopping for a red light, lost traction while turning, and drove through two additional intersections without stopping for stop signs. One of these latter intersections was surrounded by residences and the other by open bars and restaurants. Failing to stop at this final intersection was particularly dangerous because of chronically poor visibility. A rational jury could find beyond a reasonable doubt that Shahan, by ignoring this succession of traffic controls while driving too fast, drove in a manner indicating an unreasonable disregard of an obvious or known risk that he would hit anyone crossing those intersections.[9] *See Whitcomb*, 51 Wn. App. at 327, 329. A rational jury, in finding that Shahan drove in a manner indicating a willful or wanton disregard for the lives of others, could also rely upon the evidence that he was transporting two passengers in his vehicle. The State presented sufficient evidence.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, C.J.

We concur:

ARMSTRONG, J.

[9] That no one crossed them at the moment Shahan did simply means that he did not commit the more serious crime of vehicular assault or homicide.

PENOYAR, J.